

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:07-CR-00016-1-F
No. 4:12-CV-0064-F

DAMEN LAMAR WILLIAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

This matter is before the court on the Government's Response [DE-40], withdrawing its arguments against the relief sought by petitioner, Damen Lamar Williams in his May 24, 2012, Motion to Vacate, Set Aside or Correct his conviction and sentence [DE-37], pursuant to 28 U.S.C. § 2255. Williams through counsel, asserted one claim. He argued he is not guilty of having been a felon in possession of a firearm under 18 U.S.C. § 922(g), in light of *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (*en banc*). Williams entered a plea of guilty to that offense without a plea agreement on May 14, 2007, *see* [DE-14], and was sentenced on October 16, 2007, to a term of 92 months, followed by a three-year term of supervised release. *See* Judgment [DE-23]. Williams currently is serving his period of incarceration with a projected release date of December 14, 2013.

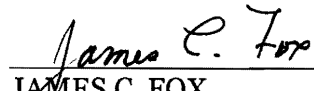
In its initial response to Williams' § 2255 motion by way of a Motion to Dismiss [DE-37], the Government argued that his petition was procedurally barred, the motion was untimely under any subdivision of § 2255(f), that Williams was not actually innocent and that equitable tolling does not excuse the untimeliness of the motion. *See* [DE-37, -38]. However, in its Supplemental Response [DE-40], the Government deliberately waives the statute of limitations defense in this case, and invites the court to reach the merits of Williams' claim.

A review of Williams' prior criminal record, in light of the ruling in *Simmons* and the content of the Government's Response [DE-40], together with the record in this case convinces the court that Williams in fact was and is "actually innocent" of the § 922(c) conviction. Because he was not a "felon" at the time of that alleged conduct under North Carolina law, as properly construed, an element of the § 922(g) offense was lacking.

In summary, the Government's Response [DE-40], and Williams' § 2255 motion [DE-34] are ALLOWED. The judgment of conviction and sentence, entered on October 16, 2007 [DE-23] hereby is VACATED. Damen Lamar Williams is ORDERED to be released from federal custody, subject to pending detainers, if any.

SO ORDERED.

This, the 20th day of August, 2012.



JAMES C. FOX
Senior United States District Judge